Re MOTOR TRADERS FINANCE CO., LTD.

[Criminal Revision (Brown, Ag. C. J.) May 3, 1951]

[Singapore — Criminal Revision No. 1 of 1951]

Opium and Chandu Proclamation (No. 43) s. 17(1) — Opium concealed in motor vehicle — Forfeiture — Motor-vehicle loaned to accused by hire-purchaser — Guilty knowledge of hire-purchaser.

The Motor Traders Finance Co., Ltd., the petitioners in this case entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

Held, distinguishing the cases of **Cheng Kee Huat v. Public Prosecutor**[1] and **Public Prosecutor v. Goh Ah Moi**[2] that under the circumstances and in view of the guilty knowledge of the hire-purchaser, the learned Magistrate had exercised his discretion properly.

Cases referred to:—

(1) *Cheng Kee Huat v. Public Prosecutor* (1948) M.L.J. 53.
(2) *Public Prosecutor v. Lim Geok Ching* (1949) M.L.J. 154.

CRIMINAL REVISION.

M. B. Brash for the petitioners.
E. P. Shank (D.P.P.) for the Crown.

Brown, Ag. C.J. : — The petitioners, the Motor Traders Finance Co. Ltd., entered into a hire-purchase agreement with one Tan Swee Loh, who lent the car to the accused. The accused was convicted on a charge of being in possession of opium contrary to the provisions of section 3 of the Opium and Chandu Proclamation, and the learned Magistrate, exercising the discretion which is given to him by section 17(1), made an order for the forfeiture of the car. The petitioners were innocent of any complicity in the offence, but Tan Swee Loh was not. And the learned Magistrate found as a fact that Tan Swee Loh was aware of the use to which the car was going to be put.

This case must be distinguished from the two cases which were cited of *Cheng Kee Huat v. Public Prosecutor*[1] and *Public Prosecutor v. Lim Geok Ching*[2]. In both those cases the person who was in possession of the vehicle was also the owner, and the offence was committed by an employee without his knowledge. In this case the person who was in possession of the vehicle was not the owner but the hirer under a hire-purchase agreement, and he had guilty knowledge. There can be no doubt that if he had been the owner the learned Magistrate's discretion would have been properly exercised.

The amount remaining to be paid by the hirer under the hire-purchase agreement was $736. And I was concerned to see that in penalising the guilty hirer by forfeiting the car the innocent owners should not also be penalised by the loss of this sum which remained due to them under the agreement. For this purpose the hearing of this Revision was adjourned part heard in order that the hire-purchase agreement might be produced so that it might be seen what, if any, remedy the owner would have against the hirer for the recovery of this sum.

By clause 4 of the Agreement the hirer agrees that "he will not during the hiring use or permit to be used the vehicle in contravention of any Statute, Ordinance, Enactment or regulation for the time being in force or in any manner by reason of which the vehicle may become liable to seizure, confiscation or forfeiture." The hirer has committed a breach of the Agreement under this clause and has rendered himself liable to an action for damages.

I have considered the possibility of the hirer being a man of straw, from whom the damages awarded might not be recoverable. Clause 13 of the Agreement afforded the opportunity for the owners to require a guarantor, of which they did not avail themselves. Subject to this possibility, the owners will be able to recover the balance of the money which remains due to them under the Agreement, and I therefore see no reason to quash the order of forfeiture which the hirer has brought upon himself.

Order accordingly.

Note:— The Opium and Chandu Proclamation was repealed by section 49 of Ordinance No. 7 of 1951. With regard to Forfeiture of Drugs etc., see section 30 of this Ordinance. — *Ed. M.L.J.*

TENG YENG v. N.KR. ARUNASALAM CHETTIAR.

[Orig. Civ. Juris. (Hill, J.) June 27, 1951]

[Ipoh — Civil Suit No. 374 of 1950]

An example of a Case where the Court held that the plaintiff's claim was misconceived and dismissed the same with cost.

CIVIL SUIT.

K. C. Chan for the plaintiff.
M. S. Mahendran for the defendant.

Hill, J. : — This matter was adjourned to enable me to consider whether the plaint disclosed a cause of action.

There are a good many differences between the parties on which the Court would have to make findings of fact if evidence was taken, but the essential facts now for consideration which are common to both sides are that the plaintiff was a monthly tenant of the defendant for some years. By April 1950 the premises became so seriously dilapidated that the Kuala Kangsar Town Board issued a prohibitory order against the use of the building on 27th April, 1950.

In July the Town Board served notice on the plaintiff to vacate the premises and the plaintiff has been convicted and fined in the Magistrate's Court for not complying with this notice.

The plaintiff asks for :—

(a) a declaration that he is the lawful tenant of shop house bearing No. 8, Jalan Kangsar, Kuala Kangsar;

(b) that the plaintiff is entitled to occupy the said shop house after the necessary repairs had been done to the said shop house;

(c) an injunction restraining the defendant from letting out the said shop house bearing No. 8, Jalan Kangsar, Kuala Kangsar, to anyone than the plaintiff and from selling the said shop house free of the tenancy of the plaintiff.

As regards these three prayers it must be borne in mind that the plaintiff was only a monthly tenant, with only a monthly tenant's common law rights and privileges, except for the protection extended to him by the Control of Rent Ordinances. As it is these Ordinances curtail to a considerable extent a landlord's common law rights on the grounds of public policy. It has more than once been stated and held by the Courts that it is wrong to go beyond the strict letter of these emergency provisions and further curtail a landlord's common law rights.

Even if all the plaintiff's allegations were substantiated, I should feel, applying this principle, that it would be wrong at this stage to declare (b) and to grant (c). He is clearly asking for more than any monthly tenant is entitled to under the common law and it would be straining, in my opinion, the provisions of the local law to say that they have extended such rights to him, at any rate, in the circumstances of this case.

If, at some future date, the defendant wrongfully and illegally denies to the plaintiff the use of these premises, it will then be the time for the plaintiff to bring an action for damages or such other relief as he may be advised.

As regards (a), the fact that the plaintiff was defendant's tenant is not in dispute, but it appears to me that the action of the Town Board in closing the premises and evicting the plaintiff has in fact put an end to the plaintiff's monthly tenancy.

I consider that this reason alone would be sufficient not only for refusing (a), but also (b) and (c).

I consider the plaintiff's claim misconceived and it is dismissed with costs.

Order accordingly.

SOH EDDIE v. TJHIN FEONG FAH.

[Orig. Civ. Juris. (Rogers, J.) June 4, 1951]

[Singapore — Suit No. 61 of 1951]

Husband and Wife — Purchase of property by husband in wife's name — Presumption of gift — Rebuttal.

The facts appear sufficiently in the judgment.

Held, that the presumption of a gift to a wife may be rebutted by showing that at the date of the purchase there was no present intention to benefit the wife. There must be evidence of a contemporaneous declaration by the husband to the contrary. Subsequent declarations are not sufficient to rebut presumption.

Requirements of a Chinese marriage considered.

Cases referred to :—

(1) *Six Widows' Case (Choo Eng Choon v. Neo Chan Neo & Ors.)* 12 S.S.L.R. 120.

(2) *Cheang Thye Phin v. Tan Ah Loy* (1920) A.C. 369.

(3) *Woon Kai Chiang v. Yeo Pak Yee & Ors.* (1926) S.S.L.R. 27.

(4) *Er Gek Cheng v. Ho Ying Seng* (1949) M.L.J. 171.

CIVIL SUIT.

H. R. Wilson for the plaintiff.

Eric Choa for the defendant.

Rogers, J. : — The plaintiff and the defendant made each other's acquaintance in 1927. He was unmarried and she a widow. They were both young and mutually attracted and within a week had begun to live together. For this purpose the plaintiff rented a room in Silat Road. During the course of the next 12 months they adopted a small girl, and this girl has made her home with them from that time until the date of her marriage in 1950. They both looked on her as a daughter, photographs were taken of the 3 of them together, and for the wedding the invitations were sent out in the name of both plaintiff and defendant as Mr. and Mrs. Soh Eddie. During the years 1927 — 1938, the family lived at various addresses,